



# City of Carmel

## **Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, April 26, 2004**

The regularly scheduled meeting was held at 7:00 PM in the Council Chambers of Carmel City Hall on April 26, 2004. Those members in attendance: Leo Dierckman, James Hawkins, Earlene Plavchak, Madeleine Torres, and Charles Weinkauf, thereby establishing a quorum. Department of Community Services Staff in attendance: Director Mike Hollibaugh and Planning Administrator Angie Butler. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes as submitted from the March 22, 2004 meeting. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0.**

Ms. Butler gave the Department Report. She pointed out that Item 1d Brookshire Village, Lot 60: Kett Residence on the Hearing Officer agenda had been tabled to be heard before this Board because it stated a 7:00 PM Hearing Time in the Public Notice. Item 13h Woodland Springs, Sec 2, lot 138: King Residence the Public Notice was two (2) days late. The Department Report for Item 2-6h contained an error and the Department is in support of all variances for Mike's Express Carwash.

Mr. Molitor gave the Legal Report. He stated that the Board might be able to dispense with the Executive Session to discuss pending litigation that was scheduled after the regular meeting. Under New Business tonight, they may be able to discuss scheduling an Executive session and a training session. At this point, notification still has not been received from Sprint advising if they intend to appeal their case to the U. S. Supreme Court that the Board won at the Court of Appeals in Chicago. In reference to that, the Plan Commission has under consideration a couple of changes to the definition of tower. Hopefully the Board will be able to avoid any further litigation on that point.

### **H. Public Hearing.**

#### **1d. Brookshire Village, Lot 60: Kett Residence (from 6:15 PM Hearing Officer meeting)**

The applicant seeks approval of the following development standards variance:

**Docket No. 04030040 V** Ch.8.04.03.D.1 rear yard setback

The site is located at 12547 Charing Cross Rd. The site is zoned R-2/Residence.

Filed by Gilbert Kett.

Present for the Petitioner: Gilbert Kett, 12547 Charing Cross Road, Carmel, IN. This variance is to enclose the existing patio and make a four-season room. The patio faces the buffer zone for the O'Malia's shopping center at the rear of the property. There are six to seven feet between the patio and the buffer line.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. The Department recommends positive consideration of this variance.

The Public Hearing was closed.

Mr. Dierckman moved to approved **Docket No. 04030040 V, Brookshire Village, Lot 60: Kett Residence**. The motion was seconded by Mrs. Torres and **APPROVED 5-0**.

**1h. Carmel Science & Technology Park, Lots 11B & 11C:  
Congressional Flex Space (V-132-03/ #03120025)**

The applicant seeks the following development standards variance:

**Docket No. V-132-03** #03120025 Ch. 20D.04.06 front landscaped yard

The site is located at southwest 122<sup>nd</sup> Street & Congressional Blvd.

The site is zoned M-3/Manufacturing. Filed by Mila Slepaya of Mid-States Engineering.

Present for the Petitioner: Todd May, J. C. Hart Company, 10401 N. Meridian Street, Indianapolis, IN. The design for this building has been changed on the lot. Instead of one large building, there will be two smaller buildings. The site and property lines have not changed. This property received Plan Commission approval April 20, 2004.

Gary Murray, Mid-States Engineering, 970 Logan Street, Noblesville, IN. He stated that 122<sup>nd</sup> Street currently has plans prepared by Woolpert Engineering to expand up to four lanes. In those plans for the project, the City acquired the necessary right-of-way to build the project. This site has already granted right-of-way for that project. The centerline of 122<sup>nd</sup> Street is moving north. The 20-year Thoroughfare Plan requires a 70-foot half right-of-way. They would like an eighteen feet right-of-way to be granted from the land that was already taken by the City. The green space will be in the right-of-way, instead of on this property.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. This is a unique situation. The City has acquired right-of-way. This variance is needed in order to continue the landscape yard setback. The Department recommends a positive consideration.

Mrs. Torres moved to approve **Docket No. V-132-,#03120025, Carmel Science & Technology Park, Lots 11B & 11C; Congressional Flex Space**. Mr. Hawkins seconded the motion.

The Public Hearing was closed.

The Docket was **APPROVED 5-0**.

**2-6h. (#04020014 V-04020018 V) Mike's Express Carwash**

The applicant seeks approval of the following development standards variances:

<i>Docket No. 04020014 V</i>	Ch.25.07.02-08	Carmel Dr. ground sign height
<i>Docket No. 04020015 V</i>	Ch.25.07.02-08	Range Line Rd. ground sign height
<i>Docket No. 04020016 V</i>	Ch.25.07.05	number of menu signs
<i>Docket No. 04020017 V</i>	Ch.25.07.05	menu sign on a non-fast food property

~~*Docket No. 04020018 V* Ch.25.07.05 menu sign square footage~~

WITHDRAWN

The site is located at 1250 S Range Line Rd. The site is zoned I-1/ Industrial.

Filed by Charlie Frankenberger of Nelson & Frankenberger.

Present for the Petitioner: Jim Shinaver, Nelson & Frankenberger. These are sign variances. The project received approval from the Plan Commission on April 20, 2004. He showed an aerial photo of the site. They desire to demolish the existing buildings and replace them with an automated car wash facility and a new self-service car wash facility. They worked closely with the Planning staff and Les Olds of the Carmel Redevelopment Commission to redevelop this site in a manner that would be consist and compatible with the other changes along the Range Line Road corridor, as well as the Monon Trail area. He shared the approved site plan. This site is next to the Shell Station, which blocks much of the view of this property with a 7-8 foot hedgerow. The existing pole sign of the Carmel Car Wash is a pre-existing nonconforming pole sign, which may be grand fathered. In deference to the staff and in an attempt to achieve the improved redevelopment of this area, the Petitioner is willing to remove this sign and replace it with the proposed ground signs. He showed the location of all the signs in relation to the two new buildings. An elevation of the building was shown. A car wash business is also a drive-thru business and menu signs are needed for the customers. These menu signs are consistent with the building elevations and the ground signs. Renderings of the proposed ground signs were shown. The sign ordinance permits ground signs to be six feet in height. The proposed ground sign for Carmel Drive will be seven feet in height. The proposed ground sign for Range Line Road will be eleven feet in height. There will be no wall signs on the buildings. These will be the only signs for passing travelers. This site is lower in grade than the existing Shell Station and its hedgerow. The increased heights of the signs will provide more adequate and safer notice to potential customers, especially at the intersection of Carmel Drive and Range Line Road. The brick wall and trees at Curley's property slightly obstructs the vision of the car wash site. He pointed out that the ground sign on Carmel Drive will be seven feet, not seven feet two inches as indicated in the Staff Report. The Range Line Road sign will be eleven feet in height, not ten feet ten inches as reported.

Members of the public were invited to speak in favor; no one appeared.

**Public Remonstrance:**

Tom Duke, 14186 Edwards Circle, Carmel, IN. He owns the Ultimate Car Wash on Carmel Drive. When he built his business 18 years ago and applied for a taller entry sign, he was denied. He was required to work within the ordinance for size, color, lighting, and additional signage. He had to change his facility to meet the requirements. Competition is fun and keeps you on your toes. He only asks for fairness. If Mike's Express Car Wash is approved, he will be applying for new like signage.

Discussion followed regarding the fact that the Board of Zoning Appeals is not a precedent setting body. Each petition is reviewed on a case-by-case basis.

Mr. Molitor stated that the present pole sign is a legal pre-existing nonconforming sign as long as it is maintained in its present condition. It is grand fathered as is. If only words are changed, it might continue to be grand fathered. As more changes are made, the less likely that it will continue with protected status.

Ms. Butler gave the Department Report. The Petitioner has been very cooperative in making changes to their site plan and building architecture in order to fit in with the context of downtown Carmel. The Department recommends a positive consideration of these documents.

The Public Hearing was closed.

Mrs. Torres moved to approve **Docket No. 04020014 V, Mike's Express Carwash**. Mr. Hawkins seconded the motion.

Discussion followed regarding cars blocking the traffic while waiting for service. The lot has been configured to allow for stacking of cars.

Todd Bauer, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN. He stated there are approximately 92 parking spaces available. They do not see a problem with traffic or moving within the site. They had met with Dick Hill and Mike McBride of the City Engineering Department regarding the curb cuts. They had a lot of discussion with Staff regarding the signage size.

Mr. Shinaver stated that if stacking capabilities were not sufficient, traffic enforcers will be hired to help with the site. The eleven feet in height is needed because of the grade of the property and the hedgerow on the Shell Station property. He did not know if the City required the hedgerow that is on that property. There are a lot of unknowns about the existence of that hedge. They had worked with the Staff to determine the appropriate size of the sign to provide visibility along this street. The City of Carmel has monument markers along Carmel Drive and Range Line Road that are 12-14 feet in height. He listed other comparable signs in the area.

Discussion followed regarding the 11-foot sign in relation to the Shell Station sign.

Bill Dahm, 12712 Devon Lane, Carmel, IN. The owners of the Shell Station parcel refused an offer to replace the hedges with professional landscaping. They said they would maintain the hedgerow.

More discussion on the height of the sign.

**Docket No. 04020014 V, Mike's Express Carwash** was **APPROVED 5-0**.

The Public Hearing was closed on **Docket No. 04020015 V, Mike's Express Carwash.**

Mr. Dierckman moved to approve **Docket No. 04020015 V, Mike's Express Carwash.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

The Public Hearing was closed on **Docket No. 04020016 V, Mike's Express Carwash.**

Mr. Dierckman moved to approve **Docket No. 04020016 V, Mike's Express Carwash.** The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

The Public Hearing was closed on **Docket No. 04020017 V, Mike's Express Carwash.**

Mr. Dierckman moved to approve **Docket No. 04020017 V, Mike's Express Carwash.** The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

**7-12h. (#04020020 UV through #04020025 V) Main & Guilford Plaza**

The applicant seeks the following use variance approval:

**Docket No. 04020020 UV** Ch. 20G.05.04.A.4 permitted uses

The applicant also seeks approval of the following development standards variances:

**Docket No. 04020021 V** Ch.20G.05.04B(2)(a) front setback

**Docket No. 04020022 V** Ch.20G.05.04B(3)(a) building footprint

**Docket No. 04020023 V** Ch.20G.04.06 landscape requirements

**Docket No. 04020024 V** Ch.25.07.02-09 number of signs per tenant

**Docket No. 04020025 V** Ch.25.07.01-02 multi-level ground floor bldg

The site is located at the southwest corner of Main Street and Guilford Rd.

The site is zoned OM/MF-Old Meridian District, Multi-family Zone (pending OM/MU rezoning). Filed by Joseph Calderon of Ice Miller for Main & Guilford Plaza, LLC.

Mr. Hawkins recused himself for conflict of interest.

Present for the Petitioner: Joe Calderon, Ice Miller, One American Square, Indianapolis, IN. Variance request **Docket No. 04020024 V** has been withdrawn. This project was just approved through Plan Commission. It ties in very nicely with the whole concept of the City's vision of the Old Meridian Corridor, linking that with downtown. Elevation pictures of the project were shown. The site is a little less than an acre. The parking will be in the back, giving the building an old-world feel. An indoor auto repair business will be behind the Main Street façade. This will be a proposed multi-tenant facility with very soft uses. With the building set closer to the street, it does not meet the zoning setback requirements. The included landscaping plan provides appropriate landscaping, but not quite what the ordinance contemplates in the curb lawns. The zoning requires an 8,000 square foot building. This building will be 7082 square feet. A second level will add bulk and presence to the site. The multi-tenant, multi-level classification puts forth an unfair burden on the building. They have proposed very tasteful wall signs, which have been approved through the ADLS procedure. There will be no ground signs on this site. There will be two center identification signs on the building and room above tenant windows for their identification. The second floor will be light office use and will not need the type of signage as required by retail tenants. They feel their deviations are minor. He shared a letter in support

of the project written by Mr. Stan Naraine, the owner of 11 S. Guilford, which is the southeast corner of the intersection.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. This is the type of redevelopment that was envisioned for this corner. The Department recommends a favorable consideration of all the dockets.

The Public Hearing was closed on **Docket No. 04020020 UV, Main & Guilford Plaza.**

Mrs. Torres moved to approve **Docket No. 04020020 UV, Main & Guilford Plaza.** The motion was seconded by Mr. Dierckman and **APPROVED 4-0.**

Mr. Dierckman moved to vote on **Dockets 04020021 V through 04020025 V**, excluding 04020024 V, in one vote. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mr. Hawkins rejoined the Board.

**13h. Woodland Springs, Sec 2, lot 138: King Residence**

The applicant seeks approval of the following development standards variance:

**Docket No. 04030019 V** Ch.25.02.02 residential fence height

The site is located at 11208 Rolling Springs Drive.

The site is zoned R-1/Residence and is within the US 431 Overlay Zone.

Filed by Carl King & Deborah Mason King.

Mr. Hawkins moved to suspend the rules regarding the Public Notice for this item. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

Present for the Petitioner: Deborah Mason King, 11208 Rolling Springs Drive, Carmel, IN. They didn't realize they needed approval before they installed the fence. She had published the Public Hearing with the wrong date. Therefore, she published it again with the correct date, but it was two days late appearing in the newspaper. Their property backs up to a busy section of Keystone Avenue between 106<sup>th</sup> Street and 116<sup>th</sup> Street. Across Keystone is the Woodland Country Club golf course. They had considered other types of fences up and down Keystone Avenue regarding height, materials, drainage issues, amount of traffic, and the length of time a person can see their fence from Keystone. Pictures were shown. There is no guardrail along Keystone. The options considered were to tear down the existing three-year fence that was set in concrete, or build a brick wall or a berm. They have left 69 trees and bushes to conserve the natural environment. The fence is in nine feet from the property line to downplay its existence. The only option left was an extension of the fence. The extension is needed for safety, environmental concerns with the road dirt, increase in traffic, noise, speed, and lack of guardrail at that spot. The copy of the Department Report they received suggested that they paint the fence because it is two colors. She noted that tall one-piece fences are often knocked over in bad weather.

**Public Support:**

Michael Burton, 11138 Rolling Springs, Carmel, IN. He is the next-door neighbor to the south. He has no problem with a fence that high. The highway sets 4-5 feet above the backyards.

Cathy Campbell, 11216 Rolling Springs, Carmel, IN. She is the next-door neighbor to the north. From a survey, Keystone sets in excess of six feet above the bottom of their yard. She has spent time on the phone with INDOT asking for an environmental sound survey. INDOT was more concerned about road surfaces and sound pollution was not on their priority list. There is also a drainage issue that has gotten worse. The State said they would probably dredge the ditch along there, but have not at this point. They tried planting pine trees for blockage of Keystone, because of the standing water and shade. High fences seem to be the only option. A twenty-two feet fence would be needed to block all the sound, which is not economically feasible for the State or the homeowner. There is a utility easement on the back of the properties, thereby preventing the building of a berm. She would like all the homes to have the variances for higher fences all along their section of Keystone, because of the sound issue.

Mr. Weinkauff stated that any vote on this petition is related only to the property of the Kings.

Mike Wiley, 11141 Rolling Springs, Carmel, IN. He lives across the street from the Kings. He is also in favor of the variance. Looking across at the road, it is quite obvious the roadbed has been built up and contributes to the drainage problems. It makes the six feet high requirement inadequate, because it does not come close to shielding any sight or noise.

Members of the public were invited to speak in opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. The Department has taken the stance to recommend a negative consideration. But considering that the Board might approve this, the Department suggests the petitioner consult the Urban Forester for plant species to buffer the noise.. They suggested painting or staining the fence so that it is one color.

Discussion continued regarding the six feet fence height from the City ordinance, a 22 feet sound barrier, drainage and right-of-way, and the fact that the State can do whatever they choose.

Carl King, 11208 Rolling Springs Drive, Carmel, IN. His understanding is that Keystone will expand by taking out the center median to add lanes.

There was discussion regarding the exact location and color of the fence.

The Public Hearing was closed on **Docket No. 04030019 V, Woodland Springs, Sec 2, lot 138: King Residence.**

Mrs. Plavchak moved to approve **Docket No. 04030019 V, Woodland Springs, Sec 2, lot 138: King Residence.** The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

**14-15h. Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)**

The applicant seeks approval of the following development standards variances:

**Docket No. 04030020 V** Ch.7.04.02 lot area  
**Docket No. 04030021 V** Ch.7.04.03 lot width

The site is located northwest of Westfield Boulevard and E. 110th St. The site is zoned R-1/Residence. Filed by Dave Barnes of Weihe Engineers for Mr. & Mrs. Monson.

Present for the Petitioner: Dave Barnes, Weihe Engineers, 1050 N. College, Indianapolis, IN. Mrs. Peggy Monson, the owner, was also in attendance. They would like to divide the lot into two parcels to build a second house. Lot 2A is the original house and Lot 2B would be the new house. Lot 2B would go around the Lot 2A ten yard side yard setback, leaving a front yard width of 79 feet for the new lot. Square footage for a private well system is 20,000 square feet. The total square footage of the two lots is just a little over 39,000 square feet. These variances fall within the characteristics of other lots within this subdivision. A letter from the Clay Regional Township Waste District states sanitary sewer will be available when needed. The well is needed because there is no access to water.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. This lot does lend to being split and still fit into the character of the subdivision. The Department recommends positive consideration.

The Public Hearing on **Docket No. 04030020 V, Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)** was closed.

Mr. Dierckman moved to approve **Docket No. 04030020 V, Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)**. Mrs. Plavchak seconded the motion.

Discussion followed regarding the age of the existing garage structure.

**Docket No. 04030020 V, Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)** was **APPROVED 5-0**.

The Public Hearing on **Docket No. 04030021 V, Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)** was closed.

Mrs. Torres moved to approve **Docket No. 04030021 V, Earl and Bertha Harvey's Subdivision, Lot 2 (Lot 2B)**. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

**16h. Spring Lake Estates, Lot 38: Townsend Residence**

The applicant seeks approval of the following development standards variance:

**Docket No. 04030022 V** Ch.6.04.03.A front yard setback

The site is located at 399 Mallard Court. The site is zoned S-2/Residence.

Filed by Jay Gibson of CDG Consulting, Inc.

Present for the Petitioner: Jay Gibson, CDG Consulting, 1500 W. Oak, Suite 300, Zionsville, IN. Also present were the owners of Lot 38, Bill and Denise Townsend, Jay North of Davis Homes, and Stacey Henderson of CDG Consulting. A vicinity map and the portion of the plat of Spring Lake Estates with Lot 38 were shown. Also shown were photos of the lot in question. There is an entry wall feature and



an existing sign easement on this lot with two brick entry columns with ornamental fence and evergreen trees. A site plan for the lot was shown with the proposed encroachment of the garage. The L-shaped sign easement landscaped area forms a shield for this garage from views of traffic on Spring Mill Road. There are several development constraints for this corner lot. The covenants and restrictions for this lot require that all the garages be side-load garages. There is a twenty-foot side building setback along the west side of the lot in addition to the standard thirty-five feet front setback. He shared letters of support from residents and lot owners in the subdivision in support of the site plan as presented. He also shared a letter from a realtor, Mr. William Bennett from Century 21, stating that the garage encroachment would not have any adverse affect on the property value.

Members of the public were invited to speak in favor of the petition; no one appeared.

**Public Opposition:**

David Walsh, 12183 Teal Lane, Carmel, IN, approximately three to four lots from the lot in question. He shared his letter that he had sent in opposition to the encroachment. One hundred percent of the houses currently constructed in this subdivision meet the requirements of the setback lines. The restrictive covenants were put in place in 1994 when there was a concern regarding a deviation from the plat setback lines. There are at least five smaller lots with more burdensome setback lines and government restrictions than this property and they all managed to fit on their lot. As of this hearing the plans for this lot have not been approved by the homeowners' association. The site line will be affected from within the subdivision. He felt the homeowners' architectural design committee could work with the owner regarding these problems with the building setback lines being utilized. This eight-foot appendage will be noticeable from the adjoining property.

Tammy Reedy, 313 Mallard Court, Carmel, IN. She is at the opposite end of this same road. She is on the homeowners' association board and on the architectural committee. This is a difficult situation. She shared a letter from the association. She managed to make her house with a two-car garage fit within the setback lines. The minimum required for a ranch is 2200 square feet and the Townsend home is over 2900 square feet. This appears to be the wrong lot for this house they desire. The homeowners' association does not feel it is their role to make this house fit onto this lot. Everyone else has managed to follow the rules for the setbacks by either switching lots or modifying their house plans.

Mr. Weinkauff asked if based on the by-laws of the subdivision, does the homeowners' association board have the authority to speak on behalf of the entire subdivision on matters of this type.

(Answer from audience was inaudible.)

**Rebuttal:**

Bill Townsend, 1657 Handball Lane, Indianapolis, IN. There are three members of the homeowners' association. After the homeowners' board wrote the letter, Mr. Townsend spoke with the other two members of the board and they knew nothing about the letter. He contends that Tammy Reedy is the only person on that board that wrote that letter. An architectural board member, Cathy Stetter, had talked with Tammy about the house. He met with the committee and he did not know the final footage of the house, but estimated it at 2800-2900 square feet. He is using the Davis Homes project called "Build on your own lot".. It is a production-type house of the garden series. That is the reason things cannot be moved and switch around. It is a two-car garage. A front-load garage would probably fit on those restricted areas. He has tried to work with them on landscaping to blend things in.

Ms. Butler gave the Department Report. Based on the information the Department had, they are recommending negative consideration. One of the planners who reviewed this plan stated there is too much house for this particular lot. If the Board does decide to approve the petition, they suggest flipping the house floor plan horizontally. In speaking with the petitioner, it seemed his neighbor would not want the floor plan flipped.

The Public Hearing was closed on **Docket No. 04030022 V, Spring Lake Estates, Lot 38: Townsend Residence.**

Mr. Hawkins moved to approve **Docket No. 04030022 V, Spring Lake Estates, Lot 38: Townsend Residence.** Mr. Dierckman seconded the motion.

Mr. Hawkins questioned the size of the garage. Mr. Townsend stated it is a two-car garage, not a three.

Jay North, 11525 Scottish Bend, with Davis Homes. Part of the living space comes into the extension that looks like the garage.

Mr. Dierckman questioned the conflict with the covenants and tabling this variance until the differences are alleviated.

Mr. Molitor stated that this Board does not have jurisdiction over subdivision covenants and cannot grant a variance from the covenants. That is a matter of private contract among the various lot owners in that subdivision. Even if this Board were to grant a variance, if the subdivision covenants prohibit this sort of a plan, the variance will be of no significance to this particular owner.

Mr. Weinkauff asked if the Department knew if the subdivision covenants would restrict or over-rule the granting of this variance.

Mr. Molitor stated he had not reviewed the covenants and it is not the Department's place to issue an opinion on something like that.

Discussion followed regarding the issues of the covenants.

Mr. Walsh shared the lines in the covenants pertaining to this issue.

Mr. Molitor stated that the referenced section makes reference to the building setback lines as established on the plat and states that no building or structure shall be erected or maintained between said setback lines. However, he has not had an opportunity to read the entire covenants and determine what the procedure might be for waiving or amending provisions in these restrictions. He does not think it is proper for either Staff or the Board to weigh in on that point, because it is a matter between private parties.

Mr. Weinkauff explained that the Board can vote on the position this evening, but as legal counsel said it is very possible that even the granting of the petition may be negated by the covenants and by-laws. He recommended the item be tabled, either voluntarily by the petitioner or by the Board.

Mr. Townsend stated he was given legal advice that the Board had jurisdiction over the covenants. That's why he had waited this long in the process, because he knew the homeowners' association was against this. He guessed maybe he had been given wrong information. However, his copy of the covenants says that side-load garages could possibly be, as approved by the developer, "required" is marked out and says "where reasonable" and there might even be an opening for a front-load garage. The covenants were written in 1994. There have been several amendments, scratches and things written on them. He is in the situation now that he needs to know if he is going forth with this house. He realizes representatives on behalf of the homeowners' association may challenge the Board's vote. He is willing to take that chance. He needs to know if he will be building a house here. If he gets a positive vote, he will go through those steps. If he does not get a positive vote, he is willing to take the consequences. He wants to be there. He bought the lot last summer and has been paying association dues since then. He did not have his landscaping plan with him. He has volunteered to work with that committee for landscaping and grading of his lot.

**Docket No. 04030022 V, Spring Lake Estates, Lot 38: Townsend Residence was APPROVED 3-2,** with Mr. Hawkins and Mrs. Torres casting the negative votes.

**17h. WITHDRAWN ~~Waterwood of Carmel, Sec 2, lot 47: Collins Residence~~**

~~The applicant seeks approval of the following development standards variance:~~

~~**Docket No. 04030023 V** Ch.26.02.19.D platted building setback line~~

~~The site is located at 11190 Ruckle Street. The site is zoned R-1/Residence.~~

~~Filed by Doug Herold of Kevin M Armour Construction.~~

**18-19h. WITHDRAWN ~~Merchants' Square: The Party Tree~~**

~~The applicant seeks approval of the following development standards variances:~~

~~**Docket No. 04030024 V** Ch.25.07.01-04.f banners prohibited signs~~

~~**Docket No. 04030025 V** Ch.25.07.02-12.B.1 number illuminated window signs~~

~~The site is located at 2160 E 116th Street. The site is zoned B-8/Business.~~

~~Filed by Terry Holland of The Party Tree.~~

**I. Old Business.**

There was no Old Business.

**J. New Business.**

Mr. Molitor stated that the Department is prepared to begin to docket the applications that came from Martin Marietta for the approval of the expansion of their mining operations to the parcel on the south side of 106<sup>th</sup> Street. At least three of the Board members are aware that the litigation still pending between the Board and Martin Marietta relates to the parcel on the north side of 106<sup>th</sup> Street. Mr. Molitor would like to recommend that the Board schedule another time for an Executive Session so that they can be briefed on the status of that litigation. At this point there is not much to discuss. It has

been quite a while, close to a year, since the Board has been briefed on that litigation.

Mr. Hollibaugh stated that the Staff is still in the process of reviewing the first petition, which is for mining the sand and gravel south of 106<sup>th</sup> Street. Originally they had targeted the May BZA meeting, but they have talked among themselves and it sounds like Martin Marietta may not be ready with all of their responses to this month's TAC and the May TAC meetings.. June may be a better month for that one petition. According to the calendar, June 15 may be available for a Special BZA meeting.

Mr. Weinkauff felt that a special BZA meeting was appropriate.

Breakfast times for an Executive Session were discussed. Staff will determine some available dates.

**K. Adjourn.**

Mrs. Plavchak moved to adjourn. Mr. Dierckman seconded the motion and it was **APPROVED 5-0.**

The meeting was adjourned at 10:30 PM.

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Charles Weinkauff, President

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Connie Tingley, Secretary